

under 35 U.S.C. § 102(a) by Gardiner Patent 5,817,329. In addition, such claims are also rejected under 35 U.S.C. § 103 for obviousness over a combination of the Gardiner '329 patent and Kola et al.

To support a rejection for anticipation under Section 102, it is axiomatic that the claimed subject matter must be fully disclosed in the cited reference. Applicants have carefully studied the Gardiner '329 patent and find no disclosure whatever of a food supplement that includes both lipoic acid and creatine (or creatine monohydrate). It is true that creatine monohydrate is mentioned in the Gardiner reference in column 4, lines 20-21 and 36-37, and also in column 5, lines 42-46, but at no point is it suggested that any benefit would be derived by combining that ingredient with lipoic acid. Nowhere is lipoic acid, or alpha lipoic acid, even mentioned. Therefore in the absence of some disclosure in the '329 reference of a combination of the two ingredients, it is submitted that a rejection for lack of novelty under Section 102 is improper.

Reconsideration and withdrawal of the rejection for obviousness under Section 103 is also requested. First of all, it is submitted that the existence of Patent 6,136,339 (from which applicants claims 11-14 and 25-27 have been copied) stands as clear representation that the combination has indeed been considered by the PTO to be inventive--otherwise Patent 6,136,339 would not (or should not) exist.

Second, while lipoic acid is admittedly well known, as acknowledged in applicants' specification and as indicated in the Kola et al. reference, there is nothing in the prior art to the best of applicants' knowledge that teaches a food supplement in which both ingredients are combined. No suggestion to that effect appears in either the Kola et al. or Gardiner references. In the absence of some suggestion in the art for combining the teachings of the two references (other than from what appears in applicants' own disclosure), it is submitted that a rejection for obviousness under Section 103 is improper.

With regard to applicants' claims 15-24, the Examiner rejected all of these claims for obviousness under Section 103 over a combination of Schmidl et al., Majeed et al., Pera and Beale, all for reasons of record as set forth in the preceding office action. The grounds for rejection over those references were fully addressed in applicants' response dated July 25, 2000, and those arguments are included here mutatis mutandis. For the reasons given in the July 2000 response, it is submitted that claims 15-24 are patentably distinguishable from the prior art and are in proper condition for allowance.

It should also be noted that claims 15-24 all recite a multiple-ingredient food supplement in which two of the ingredients are creatine monohydrate and alpha lipoic acid. Therefore, it is submitted that such claims are also patentable over the prior art for the reasons expressed above

with respect to the patentability of claims 11-14 and 25-27.

In view of the above, applicants respectfully submit that all of the claims now presented are patentably distinguishable from the prior art and are in proper condition for allowance. Favorable action is therefore respectfully requested.

Respectfully submitted,


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